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JUL 16 2010

OFFICE OF PETITIONS

In re Patent of Birgit Bollbuck et al.	:	DECISION ON REQUEST
Patent No. 7,645,760	:	FOR RECONSIDERATION OF
Issue Date: January 12, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/532,331	:	AND NOTICE OF INTENT TO
Filing Date: April 22, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. CASE 4-32743	:	CORRECTION

This is a decision on the petition filed February 1, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by nine hundred sixty-three (963) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by nine hundred sixty-three (963) days is **GRANTED to the extent indicated herein.**

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

Patentees' argument that the patent term adjustment should be increased by 315 days from 648 days to 963 days is based on an assertion the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 315 days.

The Office disagrees with the 315-day calculation for two reasons.

Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include any time period consumed by continued examination. Although Patentees recognized the need to exclude a time period due to the RCE, Patentees failed to exclude the actual date the RCE was filed from the period of B Delay. The period of B Delay is 314 days, not 315 days, after removal of the time period consumed by continued examination, but before removal of any time pursuant to 35 U.S.C. § 154(b)(1)(B)(ii).

Pursuant to 35 U.S.C. § 154(b)(1)(B)(ii), B Delay does not include any time period consumed by appellate review. Therefore, B Delay does not include the 57 days consumed by appellate review as a result of the Notice of Appeal filed January 8, 2009.

The period of B Delay is 257 days after the period consumed by continued examination and the period consumed by appellate review are excluded from the period of delay.

The record indicates the period of B Delay does not overlap with the period of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay"). Therefore, the patent term adjustment on the patent should have included a 257-day increase for B Delay.

The patent term adjustment is 905 days which is the sum of 657 days of A delay and 257 days of B delay reduced by 9 days of delay by Patentees.

A request under 37 C.F.R. § 1.705(d) must be accompanied by payment of the \$200.00 set forth in 37 C.F.R. § 1.18(e). The petition states the fee is not due based on a prior decision by the Office dismissing a petition under 37 C.F.R. § 1.705(b) as premature. The instant petition states the prior decision "indicated that no additional fees are required for consideration of the instant petition." However, a review of the prior decision indicates the decision stated, with emphasis added,

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance [of the patent] and *must* include payment of the required fee under 37 CFR 1.18(e).

In view of the prior discussion, the \$200.00 fees set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-4409 for the instant petition.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **nine hundred five (905)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,645,760 B2
APPLICATION NO. : 10/532,331
DATED : January 12, 2010
INVENTOR(S) : Birgit Bollbuck et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected to read as follows:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 648 days.

Delete the phrase "by 648 days" and insert -- by 905 days--